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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

VICTORIA DORSETT, Plaintiff and Respondent, v. DANIEL DORSETT, Defendant and Appellant.	A146840 (Contra Costa County Super. Ct. No. MSD15-00066)

MEMORANDUM OPINION[1]

Daniel Dorsett (appellant), in pro per, appeals from the trial court's order granting Victoria Dorsett's (respondent) request to renew a restraining order protecting her from appellant. We affirm the order.

On January 7, 2015, respondent filed a petition for dissolution of her marriage with appellant, with whom she has two young children. On January 20, 2015, she filed a request for a restraining order against appellant under the Domestic Violence Prevention Act (DVPA), detailing various acts of harassment that began when she returned to work after staying home with the children during most of the marriage. She declared that appellant, who was previously "extreme[ly] controlling," became "even more

[1]We resolve this case by a memorandum opinion pursuant to California Rules of Court, Standard 8.1, which provides that a memorandum opinion is appropriate when an appeal is: "(1) . . . determined by a controlling statute which is not challenged for unconstitutionality and does not present any substantial question of interpretation or application; [¶] (2) . . . is determined by a controlling decision which does not require a reexamination or restatement of its principles or rules; or [¶] (3) . . . rais[es] factual issues that are determined by the substantial evidence rule."

controlling" and obsessive as he, among other things, sent her 30 to 40 text messages throughout the day, berated and threatened her and demanded to know where she was every minute, prevented her from going anywhere other than to and from work, stalked her on social media, and physically blocked her from leaving the home on more than one occasion. Appellant had a history of unstable behavior and had two restraining orders filed against him in previous relationships. The trial court granted a temporary restraining order the same day.

Over the course of the next few weeks, appellant filed multiple responses including six declarations and numerous exhibits totaling over 80 pages. He stated he had "never physically harmed Victoria or my children ever," and that while there had been verbal abuse "from both of us," the "majority [wa]s from Victoria." He admitted he sent her many text messages but said he did so in order to save the marriage. He acknowledged it was "a little hard" for him to accept she had returned to work and said some things to her that he did not mean, but that he never abused her. He believed respondent suffered from borderline personality disorder and/or bipolar disorder, as she had "[e]xtreme mood swing shifts." Respondent denied having bipolar disorder and declared that in fact, appellant has bipolar disorder and schizophrenia and has been placed on an involuntary psychiatric hold under Welfare and Institutions Code, section 5150.

At a February 9, 2015 hearing on the request for a restraining order, the trial court found respondent had met her burden of showing a pattern of harassment and issued a restraining order against appellant that was set to expire in six months—on August 9, 2015.

Thereafter, various proceedings took place to resolve custody, visitation, and other issues. On July 31, 2015, respondent filed a request to renew the restraining order. She declared that appellant had ignored the restraining order and had continued to harass, threaten, and manipulate her. He made continuous efforts to reconcile with her, through threats and intimidation, even after she repeatedly told him to stop contacting her. He engaged in inappropriate conversations with her in violation of the restraining order and

in front of the children, used the children to "spy" on her, and sent a text message stating he knew where she was and what she was doing, even though she had not told anyone what she was doing that evening. On November 5, 2015, the trial court granted appellant's request to renew the restraining order.

Appellant contends "[t]here is no evidence to support" the order." He states the restraining order "is not legit" because he is not a violent person and is not a threat to respondent. We reject the contention.

The DVPA (Family Code, § 6200 et seq.[2]) authorizes the trial court to issue a restraining order "for the purpose [of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved,] if an affidavit . . . shows, to the satisfaction of the court, reasonable proof of a past act or acts of abuse." (§ 6300; *Gonzalez v. Munoz* (2007) 156 Cal.App.4th 413, 421.) Abuse does not have to be physical abuse; it includes any behavior that has been or can be enjoined under section 6320, which includes such things as stalking, threatening, harassing, telephoning, and disturbing the peace. (§ 6320.) A restraining order under the DVPA "may be renewed, upon the request of a party, either for five years or permanently, without a showing of any further abuse since the issuance of the original order, subject to termination or modification by further order of the court." (§ 6345.)

When contested, a request to renew a restraining order will be granted if the trial court finds the probability of future abuse is such that a reasonable person in the same circumstances would have a reasonable apprehension the abuse will occur without a protective order. (*Ritchie v. Konrad* (2004) 115 Cal.App.4th 1275, 1288.) "[T]his does not mean the court must find it is more likely than not future abuse will occur if the protective order is not renewed. It only means the evidence demonstrates it is more probable than not there is a sufficient risk of future abuse to find the protected party's apprehension is genuine and reasonable." (*Id.*, at p. 1290.) In evaluating whether the requesting party has a reasonable apprehension of future abuse, "the existence of the

[2]All further statutory references are to the Family Code unless otherwise stated.

initial order certainly is relevant and the underlying findings and facts supporting that order often will be enough in themselves to provide the necessary proof to satisfy that test." (*Id.*, at p. 1291.) "Also potentially relevant are any significant changes in the circumstances surrounding the events justifying the initial protective order. For instance, have the restrained and protected parties moved on with their lives so far that the opportunity and likelihood of future abuse has diminished to the degree they no longer support a renewal of the order?" (*Ibid.*) "[T]he physical security of the protected party trumps all of these burdens the original or renewed protective order may impose on the restrained party. Thus, where the protected party has a 'reasonable apprehension' of future physical abuse if the current protective order expires, that order should be renewed despite any burdens this inflicts on the restrained party." (*Id*., at p. 1292.)

Here, there was ample evidence to support the trial court's implied finding that respondent's apprehension was genuine and reasonable. The circumstances that led to the issuance of the original restraining order still existed at the time respondent filed her request. If anything, they appeared to have gotten worse, as there was evidence that appellant, among other things, disregarded the restraining order, discussed inappropriate topics through text messages as well as in front of the children during custody exchanges, attempted to reconcile with respondent despite the fact that she "told [him] to stop contacting [her] and there is no chance of reconciliation," and continued to engage in controlling behavior. The trial court did not err in renewing the restraining order.[3]

The order renewing the restraining order against appellant is affirmed. Because respondent did not a file a respondent's brief, the parties shall bear their own costs on appeal. (Cal. Rules of Court, rule 8.278(a)(5).)

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[3]Appellant also argues the trial court erred in denying his motion to disqualify two trial judges. "The determination of the question of the disqualification of a judge is not an appealable order and may be reviewed only by a writ of mandate from the appropriate court of appeal sought only by the parties to the proceeding." (Code Civ. Proc., § 170.3, subd. (d).) Appellant did not seek a writ of mandate. We decline to address this argument on appeal.

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McGuiness, P.J.

We concur:

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Pollak, J.

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Jenkins, J.

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